

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:14-CR-306
)	
PEDRO ANTHONY ROMERO CRUZ, <i>et al.</i>)	The Honorable Gerald Bruce Lee
)	
Defendants.)	
)	

GOVERNMENT'S OMNIBUS RESPONSE TO
DEFENDANTS' MOTIONS IN LIMINE

The United States of America, by and through its attorneys, Dana J. Boente, United States Attorney, Stephen M. Campbell, Julia K. Martinez, and Tobias D. Tobler, Assistant United States Attorneys, hereby files this omnibus response to several *motions in limine* filed by the defendants in this case.

A. Defendant Gaitan Benitez's Motion in Limine for Immediate Disclosure of Recorded Calls and Transcripts (Doc. No. 628)

Defendant Gaitan Benitez asks this Court to order the government to immediately produce Spanish and English transcripts of any recorded call the government intends to use at trial and to identify the time, date, and parties to each call. Doc. No. 628. Defendant's motion should be denied, because it attempts to re-litigate arguments which this Court has previously considered and rejected.

On September 15, 2015, this Court heard argument on a number of motions filed in accordance with the Court-ordered motions schedule in this case. Two of those motions, which the Court ultimately denied, requested much of what defendant Gaitan Benitez requests in his *motion in limine*. See Motion for Index of All Recordings/Phone Calls the Government Intends

to Use at Trial (Doc. No. 348) (adopted by Gaitan Benitez, *see* Doc. No. 363); Motion for Designation of Recorded Telephone Calls that the Government Intends to Seek to Use at Trial (Doc. No. 359). At the motion hearing, defendants also asked that the government be required to produce Spanish-language transcripts. The Court denied defendants' motions as well as the request for Spanish transcripts, determining that any transcripts offered at trial need only contain English translations. In its Order, the Court held that it "will not require the Government to provide such a list, such transcripts, or its beliefs of who is speaking on the calls." Order, Sept. 18, 2015, Doc. No. 489 at 7. The Court further ordered "that the validity of the audio recordings, their transcription and translation, and the identities of the speakers on those recordings are factual issues reserved for trial." *Id.*

Nonetheless, as the Court noted in its Order, the government has offered to provide defense counsel a list of recordings it intends to use at trial, along with court-certified English transcripts of those recordings, when the parties exchange exhibit lists. *Id.* at 7. Though the Court declined to order the government to do so, *see id.*, the government still intends to produce an exhibit list and transcripts prior to trial. Accordingly, defendant's motion should be denied.

B. Defendant Chavez's Motion in Limine for Early Disclosure of Exhibits (Doc. No. 633)

Defendant Chavez's *motion in limine* asks the Court to order early disclosure of the government's exhibits. Doc. No. 633. In this district, the parties traditionally file exhibit lists and exhibits one week prior to trial. The government sees no reason to stray from that practice in this case and respectfully submits that the defendant's motion should be denied. Though the volume of discovery in this case is significant, the defendants have received the vast majority of discovery well in advance of trial, and the number of exhibits used at trial will be no greater than in many other cases. Indeed, the government anticipates far fewer exhibits than in a typical fraud

cases involving substantial documentary evidence. The defendants have no particular need for advance disclosure of exhibits and the government should not have to curtail its final trial preparations in order to finalize its selection of exhibits earlier than usual. The defendant's motion should be denied.

C. Defendant Gaitan Benitez's Motion in Limine to Sever Trial or Exclude Statements of Co-Defendants (Doc. No. 627)

Defendant Gaitan Benitez has filed a *motion in limine* to either sever the trial or exclude any statements made by his co-defendants which incriminate him, on the grounds that the introduction of any such statements would violate his Sixth Amendment rights under *Crawford v. Washington*, 541 U.S. 36 (2004) and *Bruton v. United States*, 391 U.S. 123 (1968). As the government noted in its Notice of Intent to Admit Recorded Statements, Doc. No. 640, the Confrontation Clause does not bar the admission of statements which are not testimonial. *United States v. Dargan*, 738, F.3d 643, 649 (4th Cir. 2013) ("As *Crawford* and later Supreme Court cases make clear, a statement must be 'testimonial' to be excluded under the Confrontation Clause."). The government does not intend to introduce any testimonial statements made by a defendant which directly incriminate another defendant at trial. Rather, the government will introduce recorded statements made to individuals whom the declarants believed to be trusted criminal associates. See Government Notice, Doc. No. 640. As the Supreme Court has made clear, such statements "made unwittingly to a Government informant" are "clearly nontestimonial." *Davis v. Washington*, 547 U.S. 813, 825 (2006) (citing *Bourjaily v. United States*, 483 U.S. 171, 181–84 (1987)). Accordingly, the introduction of such statements will not infringe the defendant's constitutional rights, and the defendant's motion should be denied.

D. Defendants' Motions in Limine Concerning 404(b) Evidence (Doc. Nos. 626, 634 & 630)

Defendants Lemus Cerna and Gaitan Benitez have each filed motions to preemptively exclude any 404(b) evidence offered by the government, Doc. Nos. 626 and 634. The Court has previously ordered the government to provide notice of any evidence it intends to introduce under Rule 404(b) at least 10 business days prior to trial. Doc. No. 482. The government fully intends to comply with this deadline. Indeed, the government recently filed several notices of evidence it intends to introduce, outlining the bases for admissibility, *see* Doc. Nos. 637, 638, 639 & 640. The government will gladly respond to any specific objections the defendants raise to any Rule 404(b) evidence. In the meantime, defendants' motions should be denied. In addition, Defendant Chavez's motion asking the Court to order the government to provide notice under Rule 404(b), Doc. No. 630, should be denied as moot in light of the order and deadline already entered by the Court, Doc. No. 482.

E. Defendant Gaitan Benitez's Motion in Limine to Preclude Expert Testimony (Doc. No. 629)

Gaitan Benitez has also filed a *motion in limine* to preemptively exclude any expert testimony offered by the government, Doc. No. 629. The government has proposed that the parties notify each other of any anticipated expert testimony 10 business days prior to trial. *See* Doc. No. 631. The government intends to provide the defendants with timely notice of any expert testimony it will offer and will respond to any substantive objections made to such notice. In the meantime, defendant's motion should be denied.

CONCLUSION

For the reasons set forth above, defendants' *motions in limine* (Doc. Nos. 626, 627, 628, 629, 630, 633, 634) should be denied.

Respectfully Submitted,

Dana J. Boente
United States Attorney

/s/

Stephen M. Campbell
Julia K. Martinez
Tobias D. Tobler
Assistant United States Attorneys
Counsel for the Government
United States Attorney's Office
2100 Jamieson Ave.
Alexandria, VA 22314
(703) 299-3700
(703) 739-9556 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on the 26th of February, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which automatically generated a Notice of Electronic Filing to counsel of record.

/s/

Julia K. Martinez
Assistant United States Attorney
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Ave.
Alexandria, VA 22314
Tel: (703) 299-3700
Fax: (703) 299-3981
julia.martinez@usdoj.gov